



# NORTH DAKOTA OFFICE OF STATE TAX COMMISSIONER INCOME TAX NEWSLETTER

RYAN RAUSCHENBERGER,  
TAX COMMISSIONER

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## Due date for filing 2016 North Dakota income tax returns

North Dakota income tax filers will have until Tuesday, April 18, 2017, to file their 2016 North Dakota income tax returns and pay any tax due on them. This applies to the following taxpayers with returns or payments that normally would be due on April 15, 2017:

- Individuals—Form ND-EZ or Form ND-1
- C corporations—Form 40
- Fiduciaries (for estates and trusts)—Form 38
- Partnerships (and limited liability companies treated like a partnership)—Form 58
- S corporations (and limited liability companies treated like an S corporation)—Form 60

The April 18 due date also applies for purposes of paying the estimated income tax installment ordinarily due on April 15, 2017.

The April 18 due date recognizes the movement of the federal income tax filing deadline to April 18, 2017, because of the Emancipation Day holiday in the District of Columbia. Under federal tax law, the Emancipation Day holiday in the District of Columbia is recognized nationwide for purposes of federal filing and payment deadlines. Emancipation Day is celebrated on April 16 of each year. However, because April 16 falls on a Sunday in 2017, the holiday will be observed on Monday, April 17, which pushes the federal due date to Tuesday, April 18, 2017.

## Extended due date changes for certain state income tax returns

The Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (P.L. 114-41; 7/31/2015) changed the federal due date for Form 1065, U.S. Partnership Return of Income, to the 15th day of the 3rd month following the end of the tax year (March 15 for calendar year filers). This is one month earlier than under prior law. This change applies to returns filed for tax years beginning on or after January 1, 2016.

In addition to the regular due date change for partnerships, the federal legislation also directs the IRS to modify the federal income tax regulations to change the maximum extension period for income tax returns filed by partnerships (Form 1065) and fiduciaries (Form 1041). For Form 1065, the maximum extension period will be changed from 5 months to 6 months, which will maintain the same extended due date currently allowed for Form 1065 (September 15 for calendar year filers). For Form 1041, the maximum extension period will be changed from 5 months to 5½ months (September 30 for calendar year filers). This change also applies to returns filed for tax years beginning on or after January 1, 2016.

**Effect of federal changes on filing of North Dakota income tax returns.** The changes to the federal income tax law and regulations described above will have the following effects, if any, on the filing of North Dakota income tax returns:

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**ND Tax**  
NORTH DAKOTA

Office of  
State Tax Commissioner  
600 E Blvd. Ave., Dept 127  
Bismarck, ND 58505-0599  
701.328.2770  
taxinfo@nd.gov  
www.nd.gov/tax

- The regular due date for filing any of the North Dakota income tax returns, including the partnership return (Form 58), is not affected by the federal changes. It remains the 15th day of the 4th month following the end of the tax year (April 15 for calendar year filers).
- North Dakota's long-standing policy has been to recognize an extension of time to file the federal income tax return as an automatic extension of time to file the North Dakota income tax return. If the changes to the federal regulations relating to the maximum extended due date are made, North Dakota's policy on recognizing federal extensions will be as follows:
  - o For all entities other than C corporations, North Dakota will follow the ***federal extended due date***. This means the extended due date for North Dakota purposes will be the same as the federal extended due date. This is a change from the previous practice of recognizing the number of months of the federal extension.
  - o For C corporations, the extended due for North Dakota purposes will be the ***federal extended due date plus one month***.

*Note: The federal legislation did not specifically mention estates in its directive to the IRS to modify the regulations relating to the maximum extension period. Because the regulation that applies to trusts also applies to estates, it is presumed that the longer extension period also will apply to estates; however, until the IRS formally acts, this is only a presumption. It also is uncertain how the IRS will apply the directive in the case of Form 1041-N and Form 1041-QFT, for which a 6 month maximum extension period has been available.*

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## Individual income tax changes and developments

### Individual income tax booklet mailing discontinued

The Office of State Tax Commissioner will not be mailing the 2016 income tax booklet (containing forms and instructions) to individuals who received one last year. The automatic mailing of the booklet has been discontinued because of the minimal use of the forms contained in it and to reduce administrative costs. Also, close to 86 percent of all individual filers now electronically file their North Dakota income tax returns. The individual income tax forms, Form ND-EZ and Form ND-1, and their instructions are available for viewing or printing on the Office of State Tax Commissioner's website at [www.nd.gov/tax](http://www.nd.gov/tax).

### Online access to federal Form 1099-G information

There is a new check-off item on the 2016 Form ND-1 and Form ND-EZ. At the bottom of each form (page 2 of Form ND-1) a Form 1099-G consent statement has been added next to the check-off for the preparer disclosure authorization. The new check-off applies only if there is an overpayment on Form ND-1, line 29, or Form ND-EZ, line 4.

If there is an overpayment on a taxpayer's North Dakota individual income tax return, federal income tax law requires the Office of State Tax Commissioner to issue a federal Form 1099-G to the taxpayer. The form shows the amount of an overpayment that is refunded (or would have been refunded) to the taxpayer during the calendar year for which the form is issued. The form must be provided to the taxpayer by January 31 of the year following the calendar year in which the overpayment is refunded (or would have been refunded) to the taxpayer. For example, for an overpayment on a 2015 return that is refunded in 2016, the 2016 Form 1099-G must be provided to the taxpayer by January 31, 2017. The taxpayer may need the state income tax refund information shown on the 2016 Form 1099-G to properly complete the 2016 federal income tax return.

Normally, the Office of State Tax Commissioner mails a paper Form 1099-G to taxpayers. However, by checking the Form 1099-G consent statement, a taxpayer agrees to obtain the 2016 Form 1099-G electronically, in which case a paper Form 1099-G will not be mailed to the taxpayer. If a taxpayer consents to receiving the Form 1099-G electronically, the taxpayer may obtain the Form 1099-G information on the Office of State Tax Commissioner's website at [www.nd.gov/tax](http://www.nd.gov/tax).

The consent on the 2016 North Dakota individual income tax return applies to a refund issued in the 2017 calendar year, which will be reported on the 2017 Form 1099-G issued in January 2018.

**Note:** *The 2016 Form 1099-G forms (showing refunds issued in 2016) will be mailed to taxpayers by January 31, 2017. Taxpayers will be able to look up their refund information on the 2016 Form 1099-G, but they will not be able to print out the form.*

### **Disregarded entity incorrectly identified as recipient of income on Form 1099-MISC**

If an individual is the sole owner of a limited liability company that is treated as a disregarded entity for income tax purposes, any North Dakota income tax that is withheld from oil or gas royalties paid to the disregarded entity may not be claimed on Form ND-EZ or ND-1 unless the Form 1099-MISC shows the individual as the recipient of the royalties. If the Form 1099-MISC shows the disregarded entity as the royalty recipient, the individual must furnish a Form W-9 to the royalty payor on which the individual's name and social security number are provided, and request the royalty payer to issue a corrected Form 1099-MISC identifying the individual as the recipient of the royalty income.

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## **Fiduciary (estate and trust) income tax changes and developments**

### **Grantor trust changes**

The instructions to the 2016 Form 38 have been revised to provide that the term "beneficiary" includes the owner of a grantor trust. This has the following effects:

- If a grantor trust owner is a nonresident of North Dakota, the passthrough entity withholding requirement and composite filing option apply to the owner. See page 3 (passthrough withholding) and page 4 (composite filing) of the instructions.
- The grantor trust owner must be included with any other beneficiary on Schedule BI of Form 38. See page 7 of the instructions.
- A Schedule K-1 (Form 38) must be provided to the grantor trust owner, if applicable. See page 11 of the instructions.

In addition to the above, the instructions to the Tax Computation Schedule (on page 2 of Form 38) have been revised to clarify that the schedule should be completed only if there is a non-grantor portion of the trust for which federal taxable income was reported on federal Form 1041. See page 5 of the instructions.

### **Federal Form 990-T filers**

The instructions relating to the filing requirement for a tax-exempt trust with unrelated business taxable income have been revised to provide that the requirement applies to a federal Form 990-T filer as well as a federal Form 1041 filer.

### **Schedule K-1 changes**

On Schedule K-1 (Form 38), line 17 (endowment fund tax credit) and line 20 (Housing Incentive Fund tax credit) have each been split into two lines. The credit amount is to be entered on lines 17a and 20a. The amount of the contribution on which the credit is based must be entered on the new lines 17b and 20b. The instructions for completing Schedule K-1 (Form 38) have been revised accordingly. These changes were made because a beneficiary may have to add part or all of the contribution amount to taxable income on the beneficiary's North Dakota income tax return. For more information on the addback adjustment, see the instructions to the beneficiary's North Dakota income tax return.

### **Schedule BI**

Every estate or trust that is required to file Form 38 must complete Schedule BI, Beneficiary Information, to provide certain information about each of its beneficiaries (including an owner of a grantor trust). To ensure that the data on Schedule BI is properly read and processed, only use the officially-prescribed form; non-prescribed forms are not acceptable.



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## Partnership and S corporation income tax changes and developments

### Schedule K and K-1 changes

**Form 58.** On Schedule K (Form 58), line 20 (Housing Incentive Fund tax credit) was split into two lines. The credit amount is to be entered on line 20a, and the amount of the contribution on which the credit is based must be entered on the new line 20b. A corresponding change was made to Schedule K-1 (Form 58).

**Form 60.** On Schedule K (Form 60), line 17 (Housing Incentive Fund tax credit) was split into two lines. The credit amount is to be entered on line 17a, and the amount of the contribution on which the credit is based must be entered on the new line 17b. A corresponding change was made to Schedule K-1 (Form 60).

The instructions for these schedules were revised accordingly. These changes were made because an owner may have to add part or all of the contribution amount to taxable income on the owner's North Dakota income tax return. For more information on the adjustment to North Dakota taxable income, see the instructions to the owner's North Dakota income tax return.

### Schedule FACT changes

A minor change was made to Schedule FACT of Form 58 and Form 60 to combine lines 11a and 11b into one line. A more substantial change was made to expand the Schedule FACT instructions to provide information on how to calculate the apportionment factor, including what is to be included in its property, payroll, and sales factor components. The additional instructions are intended to provide basic information. For more complete details, including special provisions for certain industries or unique circumstances that may apply, taxpayers are advised to see N.D.C.C. ch. 57-38.1 and N.D. Admin. Code ch. 81-03-09. The text of these statutory and administrative rule provisions can be accessed on the Office of State Tax Commissioner's website at [www.nd.gov/tax](http://www.nd.gov/tax) (click on the "Tax Resources" tab).

### Oil and gas royalty payment withholding

Oil and gas royalty payments made to certain owners of a nonworking interest in North Dakota oil and gas production are subject to North Dakota income tax withholding. This includes owners that are partnerships and S corporations if the principal place from which the business operations are directed or managed is located outside North Dakota. If North Dakota income tax is withheld from oil or gas royalty payments received by a partnership or S corporation, the amount withheld must be claimed on Form 58, page 1, line 4, or Form 60, page 1, line 5, respectively. Also, a copy of Form 1099-MISC must be attached to the return to support the claimed amount.

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## C corporation income tax changes and developments

### Weighted sales factor apportionment formula election for C corporations

Under the law applicable to tax years before 2016, a C corporation that conducted its business both inside and outside North Dakota was required to use a three-factor apportionment formula to determine the amount of its business income reportable to North Dakota. The formula is an equally-weighted average of three factors: property, payroll, and sales. Each factor is calculated by dividing the corporation's North Dakota activity by its total activity everywhere. The resulting factors are each assigned a weight of 1/3 (33.33%) and the sum of the weighted factors equals the percentage of the corporation's total apportionable income that is reportable to North Dakota.

Starting with the 2016 tax year, a C corporation that conducts its business both inside and outside North Dakota may elect to use an apportionment formula that more heavily weights the sales factor, phased in as follows:



- For the 2016 and 2017 tax years, the weighting is: property—1/4 (25%), payroll—1/4 (25%), and sales—1/2 (50%).
- For the 2018 tax year, the weighting is: property—1/8 (12.5%), payroll—1/8 (12.5%), and sales—3/4 (75%).
- For tax years 2019 and after, the weighting is: sales—1 (100%). (There is no property or payroll factor.)

The election to use the alternative apportionment formula is subject to the following conditions:

- The election must be made on a timely-filed original corporation income tax return (Form 40).
- The election applies to all C corporations in a unitary group and for all C corporations filing a consolidated North Dakota corporation income tax return.
- The election is binding for 5 tax years, after which it automatically lapses.
- After a 5-year election period lapses, a new election must be made to continue using the alternative apportionment formula. The new election must be made on a timely-filed original corporation income tax return filed for the tax year following the last year of the lapsed 5-year period.
- After a 5-year election period lapses, if a new election is not made in the prescribed manner, the equally-weighted three-factor apportionment formula must be used for the next three tax years, after which the election to use the alternative apportionment formula may be made again.

The application of special industry apportionment provisions in N.D. Admin. Code ch. 81-03-09 does not preclude making a sales factor weighting election. If a corporation's apportionment factors include amounts attributable to a passthrough entity, the election applies to the calculation of the corporation's apportionment factors, as adjusted to include the passthrough entity amounts. (Note: The passthrough entity itself may not make a sales factor weighting election.) For more information on the sales factor weighting election, see N.D. Admin. Code ch. 81-03-09.2.

For how to make the election on the 2016 Form 40, see the instructions to the 2016 Form 40, Schedule FACT, line 15. **Note: A corporation that does not make a sales factor weighting election for 2016 is not precluded from making one in a future year.**

*Note: The Multistate Tax Compact provisions under N.D.C.C. ch. 57-59.1 were revised to remove a number of provisions relating to the apportionment and allocation of a multistate business's income to make the Compact's provisions consistent with the changes made to the apportionment formula provisions under N.D.C.C. ch. 57-38.1.*

### **Passthrough entity withholding from C corporation**

If a C corporation holds an interest in a partnership (or a limited liability company treated like a partnership), the corporation's distributive share of North Dakota income from the partnership is not subject to withholding by the partnership under the passthrough entity withholding provisions. Moreover, a partnership may not withhold North Dakota income tax from a corporate partner's distributive share of income. If a partnership improperly withholds income tax, the corporation may not claim credit for the withheld tax on Form 40; instead, the partnership must correct its partnership return and issue a revised North Dakota Schedule K-1 (Form 58) to the corporate partner.

### **Disregarded entities**

**Identifying disregarded entity included in Form 40.** If Form 40 includes one or more single-member limited liability companies that are treated as disregarded entities and are doing business in North Dakota, they must be disclosed. This is done by answering question 11 on page 2 of Form 40 and attaching a statement containing the name and employer federal employer identification number (FEIN) of each disregarded entity.

**Disregarded entity incorrectly identified as recipient of income on Form 1099-MISC.** If a C corporation is the sole owner of a limited liability company that is treated as a disregarded entity for income tax purposes, any North Dakota income tax that is withheld from oil or gas royalties paid to the disregarded entity may not be claimed on the corporation's Form 40 unless the Form 1099-MISC shows the corporation as the recipient of the royalties. If the Form 1099-MISC shows the disregarded entity as the royalty recipient, the corporation must furnish a Form W-9 to the royalty payor on which the corporation's name and FEIN are provided, and request the royalty payor to issue a corrected Form 1099-MISC identifying the corporation as the recipient of the royalty income.

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## Filing reminders

### **Income tax withholding from oil and gas royalty income: Forms 1099-MISC and 1042-S**

**Form 1099-MISC and 1042-S reporting requirement for remitters.** Regardless of whether or not North Dakota income tax is withheld from any oil or gas royalty payment, every remitter must file with the Office of State Tax Commissioner a copy of any federal Form 1099-MISC and 1042-S reporting North Dakota oil or gas royalty payments. If a remitter is not required to file a federal Form 1099-MISC or 1042-S for a royalty owner for federal income tax purposes, e.g., the royalty owner is a corporation, the remitter must prepare and file a copy of a state-only Form 1099-MISC or 1042 S. The state-only Form 1099-MISC or 1042-S must show the same information that would have been reported on a federal Form 1099-MISC or 1042-S had one been required to be filed for federal income tax purposes. For details on this reporting requirement, see the income tax guideline *[Income Tax Withholding From Oil and Gas Royalty Payments](#)*.

**Check the federal identification number on the Form 1099-MISC or 1042-S.** An incorrect federal identification number (social security number or FEIN) on a Form 1099-MISC or 1042-S will generally cause a delay in processing a North Dakota income tax return and hold up a refund of any overwithheld income tax. To obtain credit for the income tax withheld on the North Dakota return, the social security number or FEIN on the Form 1099-MISC or 1042-S must match the one used on the North Dakota return. If they do not match, a letter will be sent to the taxpayer requesting corrective action to properly verify the withholding claimed on the return. This has been a frequent problem in cases where the royalty owner is a single-member limited liability company (LLC) that is a disregarded entity for federal and state income tax purposes. In the case of a single-member LLC that is a disregarded entity, the owner of the LLC is considered to be the royalty owner, and the Form 1099-MISC or 1042-S is to be issued in the name and taxpayer identification number of the LLC's owner. If the federal taxpayer identification number on the Form 1099-MISC or 1042-S is incorrect, federal Form W-9 may be completed and provided to the remitter to correct it, and the remitter should issue a corrected Form 1099-MISC or 1042-S.

### **Checking on the status of an individual income tax refund**

To check on the status of an individual income tax refund, use the "Where's My Refund?" feature on the Office of State Tax Commissioner's website at [www.nd.gov/tax](http://www.nd.gov/tax). This online lookup feature will show if the return has been received and is being processed, and the date the refund was issued. It includes a refund tracker as well as more detailed and individualized information for the taxpayer on the status of his or her return. Taxpayers may also sign up to receive email or text alerts when their refund is issued. The online lookup feature only works for original returns filed for the most current tax year. The following information is needed to use this lookup:

- Taxpayer's social security number or, if a joint return was filed, the spouse's social security number.
- Filing status used on return (single, married filing jointly, etc.).
- Exact refund amount shown on the return.

**When to check on the status of a refund.** It is recommended to wait at least 2 weeks before checking the status of a refund on an electronically-filed return and at least 6 weeks in the case of a paper return. Refund information is updated once every day. Allow 24 hours after checking on the status of a refund before checking again. There is no need to call the Office of State Tax Commissioner unless the “check refund status” indicates there is a need to do so. Also, calling in will not speed up the processing of a refund.

### **Electronic filing of Forms 38, 40, 58, and 60**

The North Dakota income tax returns for fiduciaries (Form 38), partnerships (Form 58), C corporations (Form 40), and S corporations (Form 60) may be filed electronically through the Modernized E-File (MeF) system. Through a partnership with the IRS, the MeF system allows both the federal and North Dakota income tax returns to be submitted at the same time. For a list of the software vendors who support the electronic filing of the 2016 North Dakota returns, go to the Office of State Tax Commissioner’s website at [www.nd.gov/tax](http://www.nd.gov/tax).

### **Filing reminders for paper filers**

Electronic filing of the North Dakota income tax return is encouraged. However, if a paper return is filed, check the following items before filing it to avoid unnecessary problems:

- Sign the return. For married individuals filing a joint return, both spouses must sign. An unsigned return is incomplete and will be sent back to the taxpayer.
- Include a copy of the federal income tax return. The North Dakota return is incomplete without it and will be sent back to the taxpayer.
- Enter the social security number or FEIN, whichever applies, on the return. For married individuals filing a joint return, both spouse’s social security numbers must be entered on the return.
- Check the math. This is one of the most common errors made.
- Support the North Dakota income tax withholding claimed on return. Attach all Form W-2s, Form 1099s, and North Dakota Schedule K-1s showing North Dakota income tax withholding.
- Enter the current and correct address.
- Use the correct postage. Avoid mailing problems and possible late filing charges by using the correct postage on the envelope.

**Important.** If a North Dakota return is missing a signature or a copy of the federal return, it will be sent back to the taxpayer. This may result in late filing and payment charges if it is resubmitted after the due date.

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## **Business information return due date changes**

The Protecting Americans From Tax Hikes Act of 2015 (PATH Act; P.L. 114-113; 12/18/2015) changed the due date for filing federal Forms W-2, W-3, and information returns reporting non-employee compensation (e.g., Form 1099-MISC). Starting with forms filed for the 2016 calendar year, these forms must be filed on or before January 31 of the year following the calendar year in which the payments were made. This change accelerates the filing of these information returns so that their due date coincides with the due date by which a copy of these forms must be furnished to employees and payees. In the past, employers typically had until the end of February, if filing on paper, or the end of March, if filing electronically, to submit their copies of these forms. Moving the due date up is intended to make it easier for the IRS to verify the legitimacy of tax returns and refunds claimed on them. The January 31 deadline for providing a copy of these forms to employees and payees remains unchanged.

North Dakota income tax law automatically recognizes the change in the federal due date for purposes of filing copies of Forms W-2 and 1099 (reporting non-employee compensation) with the Office of State Tax Commissioner. North Dakota law provides that copies of these forms must be filed on or before the same due date for filing them with the Social Security Administration (Form W-2) and the IRS (Form 1099). Therefore, the 2016 North Dakota Form 307 along with copies of Form W-2, and copies of the 2016 Form 1099 (reporting non-employee compensation), must be filed by January 31, 2017. The January 31 deadline for providing a copy of these forms to employees and payees remains unchanged.

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## Stay informed with email updates

To help the public stay informed about tax law changes and other developments affecting North Dakota taxes, the Office of State Tax Commissioner provides a free email update service. Through this service tax preparers, taxpayers, and others interested in changes and developments in the taxes administered by the Office of State Tax Commissioner can subscribe to one or more of the following email update lists:

- Income Tax
- Sales and Special Taxes
- Motor Fuels Tax
- Oil and Gas Tax
- Property Tax
- Motor Vehicle Tax
- Alcohol Tax
- Tax Research & Statistics
- Tax News

To sign up for email updates, go to the Office of State Tax Commissioner's website at [www.nd.gov/tax](http://www.nd.gov/tax) and click on the blue "SUBSCRIBE" button under "EMAIL UPDATES." All that is required to subscribe is a name and an email address. The application will then guide the user through the remaining steps.

A confirmation email will then be sent to the email address that was provided. Responding to the confirmation email completes the signup process. Once signed up, subscribers will receive an email notification when a newsletter or other information is added to a subscription service selected by them. Subscribers may unsubscribe at any time by entering the application again (using the name and email address used to initially sign up).